CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87686 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/368/16-17 dated 15th November 2016 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Suryalaxmi Cotton Mills Ltd
Plot E-25/26/27 MDIC, Bhosari, Pune - 411026 … ***Appellant***

versus

Commissioner of Central Excise & Customs
Telangkhedi Road, Civil Lines, Nagpur - 440001 ***…Respondent***

APPEARANCE:

Shri VM Doiphode, Advocate for the appellant

Shri DS Maan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85472/2025

DATE OF HEARING:	07/11/2024
DATE OF DECISION:	24/03/2025

PER: C J MATHEW

M/s Suryalaxmi Cotton Mills Ltd is before us for the second time and, on this occasion, challenges the order[1] of Commissioner of

[1] [order-in-appeal no. NGP/EXCUS/000/APPL/368/16-17 dated 15th November 2016]

Central Excise & Customs (Appeals), Nagpur which had rejected their challenge to the findings of the jurisdictional Assistant Commissioner of Customs that their claim for refund of additional duty of customs amounting to ₹ 1,34,34,035 was, though eligible for sanction, not to be released to them and to be credited to the Fund in accordance with section 27 of Customs Act, 1962 instead.

2. Learned Counsel for the appellant submitted that they are in the business of manufacturing 'denim fabrics' and in pursuance thereof had, against 27 bills of entry, procured 'VAT indigo', 'blue liquid indigo' and 'indigo powder' between 22nd March 2012 and 11th February 2013 and that, in ignorance of the benefit available under notification[2] (at serial no. 133), full duty liability had been discharged, partly through debit of script and partly on payment. It was also submitted that while three of the bills had been assessed by the proper officer, the remaining had been cleared under the facilitation scheme of the customs administration and that subsequently, on being made aware of the eligibility for the said exemption, claimed refund of the above amount which, having been rejected by the original authority in the first instance and sustained by the first appellate authority, was restored to the original authority by the Tribunal *vide* order[3] to scrutinize entitlement to the refund subject to overcoming bar of unjust

[2] [no. 12/2012-CE dated 17th March 2012]
[3] [final order no. A/133/2015-CB dated 10th December 2014]

enrichment stipulated in section 27 of Customs Act, 1962.

3. Learned Counsel for the appellant submitted that despite furnishing the balance sheet as well as certificate from their statutory auditor, the two lower authorities were not sufficiently satisfied to release the said amount to them.

4. Learned Authorized Representative submitted that the documents furnished by the appellant herein had been consciously discarded by the lower authorities on specific findings of not sufficing to establish that incidence of duty had not been passed on. In particular, he drew our attention to the finding therein that even on factual matrix of clearance of the impugned imports that were accounted in their factory for use in manufacture, the appellant could not have been entitled to make provision in the balance sheet at the relevant point in time as claimed by them. According to him, the documents furnished do not counter the surmise that, even as on the date of claiming the refund, the appellant had not utilized the imported goods for the manufacture of the final products. According to him, utilization without passing on the incidence of duty could be established only through a certification of cost by a competent person.

5. The issue of ‘captive consumption’ of inputs in the manufacture of finished products impliedly having the effect of passing on the incidence of duty has been settled by the Hon'ble Supreme Court in

Union of India v. Solar Pesticides Pvt Ltd [2000 (116) ELT 401 (SC)] which has been taken note of by the original authority. However, there is no finding that release of eligible refund was absolutely prohibited in consequence of the said judgment. Section 27 of Customs Act, 1962 places the onus of having to establish that the burden of duties of customs has been borne by the applicant for refund and, while the appellant claims to have furnished satisfactory evidence, these were not found to suffice by the lower authorities. We do not propose to go into the merit of reasons for the discard as Learned Counsel has submitted that the 'cost certification' which prevented the lower authorities from considering the inclusion, or otherwise, to duties in the price of the finished goods had since been obtained. It appears to us that the sole stumbling block, *viz.,* the absence of 'cost certification' has now been set right. All that remains to be done is that for the original authority to examine and proceed on the basis of certification so provided.

6. To enable this, we set aside the impugned order and remand the matter back to the original authority by restoring the application for fresh decision thereof in accordance with the provisions of law and as set out in judicial determination.

(Order pronounced in the open court on 24/03/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*